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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                         | CONFIRMATION NO.       |
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| 10/816,589  | 03/31/2004  | Xuming Chen          | 03356/0200492-US0                           | 8431                   |
| 20277 7590 09/21/2007<br>MCDERMOTT WILL & EMERY LLP<br>600 13TH STREET, N.W.<br>WASHINGTON, DC 20005-3096 |             |                      | EXAMINER<br>MANOHARAN, MUTHUSWAMY GANAPATHY |                        |
|   |             |                      | ART UNIT<br>2617                            | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/816,589

Applicant(s)

CHEN ET AL.

Examiner

Muthuswamy G. Manoharan

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

All the previous claims 1-25 have been canceled. New claims 26-45 have been added.

Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claims 31 32,42 and 43 are objected to because of the following informalities:

The recitation of "other message" , renders the claim vague and indefinite, since it is not clear which message the claim is referring to. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 26-30, 33-39, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skog et al. (hereinafter Skog) (US 2006/0236187) in view of Cantwell et al. (hereinafter Cantwell)(US 6553237).**

Regarding **claim 26**, Skog teaches a method of handling an error in delivery of a message of a multimedia messaging service (MMS) through a wireless network to a wireless telephone (Paragraph [0027]), the method comprising steps of:

receiving a message notification via the wireless network, indicating a MMS message for the wireless telephone is available in a multimedia messaging service center (MMSC) ("**the end-user still receives notifications that there exists MMMS messages in the MMSC**", Paragraph [0027]);

in response to the notification, initiating a first attempt to obtain delivery of the MMS message for the wireless telephone from the MMSC through the wireless network ("**as he tries to collect them**", Paragraph [0027]);

upon a failure of the first attempt, obtaining an error code corresponding to a type of error that caused the failure of the first attempt to obtain delivery of the MMS message ("**an error message will be displayed**", "error message ....**error status code**", Paragraph [0027]);

classifying the failure of the first attempt to obtain delivery of the MMS message as an applicable one of permanent and temporal, based on the error code ("**the error**

**description text would typically inform the end-user that the messages have been removed**", this corresponds to a permanent error; Paragraph [0039]);

upon classification of the failure of the first attempt as permanent, abandoning attempting to obtain delivery of the MMS message for the wireless telephone through the wireless network (it is deemed to be inherent since the message has been removed there is need for attempting to obtain delivery); and

Skog did not teach specifically upon classification of the failure of the first attempt as temporal; (a) automatically waiting a time period, and (b) after waiting for the time period, automatically initiating a second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network. However, Cantwell teaches in an analogous art a method wherein specifically upon classification of the failure of the first attempt as temporal; (a) automatically waiting a time period, and (b) after waiting for the time period, automatically initiating a second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network (Figure 2; Col. 3, lines 33-67, col. 4, lines 1-20). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use a method wherein specifically upon classification of the failure of the first attempt as temporal; (a) automatically waiting a time period, and (b) after waiting for the time period, automatically initiating a second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network.

Regarding **claim 27**, Skog teaches the method of claim 26, wherein the step of obtaining an error code comprises receiving the error code corresponding to the type of error that caused the failure from the MMSC through the wireless network (Table 1;

Page 3).

Regarding **claim 28**, Skog teaches the method of claim 26, wherein the step of obtaining an error code comprises:

detecting the failure of the first attempt to obtain delivery of the MMS message, at the wireless telephone; determining the type of the error that caused the failure of the first attempt; and generating the error code corresponding to the determined type of error at the wireless telephone (table 1; Paragraph [0039]).

Regarding **claim 29**, Cantwell teaches the method of claim 26, further comprising steps of: upon a failure of the second attempt, automatically waiting another time period; and after waiting for the other time period, automatically initiating a third attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network (timer1, timer 2 and timer 3 in Figure 2).

Regarding **claim 30**, Cantwell teaches the method of claim 29, wherein the other time period of waiting upon failure of the second attempt is longer than the time period of waiting upon failure of the first attempt (Col. 4, lines 57-60).

Regarding **claim 33**, Skog in view of Cantwell teaches all the particulars of the claim except the method wherein the step of receiving the message notification comprises receiving a short message service (SMS) message containing the message notification via the wireless network, from a short message service center (SMSC). However, Kuisma teaches in an analogous art except the method wherein the step of receiving the message notification comprises receiving a short message service (SMS)

message containing the message notification via the wireless network, from a short message service center (SMSC) (Figure 1; "SMSC", "MMSC", Paragraph [0002-0005])

Regarding **claim 34**, Skog teaches the wireless telephone programmed to implement the method of claim 26 (item 10, Paragraph [0024]).

Regarding **claim 35**, Skog teaches a method of handling an error in delivery of a message of a multimedia messaging service (MMS) through a wireless network to a wireless telephone (Paragraph [0027]), the method comprising steps of:

receiving a message notification via the wireless network, indicating a MMS message for the wireless telephone is available in a multimedia messaging service center (MMSC) ("**the end-user still receives notifications that there exists MMS messages in the MMSC**", Paragraph [0027]);

in response to the notification, initiating sequence of **one or more attempts** to obtain delivery of the MMS message for the wireless telephone from the MMSC through the wireless network ("**as tries to collect them**", Paragraph [0027]);

upon a failure of a first of the attempts, obtaining an error code corresponding to a type of error that caused the failure of the first attempt to obtain delivery of the MMS message ("**an error message will be displayed**", "**error message ... error status code**", Paragraph [0027]);

classifying the failure of the first attempt to obtain delivery of the MMS message as an applicable one of permanent and temporal, based on the error code (**the error description text would typically inform the end-user that the messages have been removed**", this corresponds to a permanent error; Paragraph [0039]);

upon classification of the failure of the first attempt as permanent, abandoning further attempts to obtain delivery of the MMS message for the wireless telephone through the wireless network (it is deemed to be inherent since the message has been removed there is need for attempting to obtain delivery).

Skog did not teach specifically upon classification of the failure of the first attempt as temporal continuing the sequence by initiating one or more retry attempts to obtain delivery of the message through the wireless network, wherein for each retry attempt, the method includes; (a) automatically waiting a time period, and (b) after waiting for the time period, automatically initiating a second attempt to obtain delivery of the message. However, Cantwell teaches in an analogous art a method wherein specifically upon classification of the failure of the first attempt as temporal continuing the sequence by initiating one or more retry attempts to obtain delivery of the message through the wireless network, wherein for each retry attempt, the method includes; (a) automatically waiting a time period, and (b) after waiting for the time period, automatically initiating a second attempt to obtain delivery of the message for the wireless telephone through the wireless network (Figure 2; Col. 3, lines 33-67, col. 4, lines 1-20). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use a method wherein specifically upon classification of the failure of the first attempt as temporal continuing the sequence by initiating one or more retry attempts to obtain delivery of the message through the wireless network, wherein for each retry attempt, the method includes; (a) automatically waiting a time period, and (b) after waiting for the time



period, automatically initiating a second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network.

**Claims 36,37,38,39,44 and 45** are rejected for the same reason as set forth in claims 27,28,30,29,33 and 34 respectively.

**Claims 31,32,42 and 43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Skog et al. (hereinafter Skog) (US 2006/0236187) in view of Cantwell et al. (hereinafter Cantwell)(US 6553237) and further in view of Earnshaw et al. (hereinafter Earnshaw) (US 2003/0012212).

Regarding **claim 31**, Skog in view of Cantwell teaches all the particulars of the claim except the method further comprising steps of: successfully obtaining delivery of another MMS message for the wireless telephone from the MMSC through the wireless network during the time period of waiting; and terminating the time period of waiting responsive to successfully obtaining the other message, so as to immediately implement the step of automatically initiating the second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network. However, Earnshaw teaches in an analogous art the method further comprising steps of: successfully obtaining delivery of another message for the wireless device through the wireless network during the time period of waiting; and terminating the time period of waiting responsive to successfully obtaining the other message, so as to immediately implement the step of automatically initiating the second attempt to obtain delivery of the message for the wireless telephone through the wireless network ("The timer is turned off, before it expires, if the transmitter timely receives from a receiver a message

informing the transmitter that the associated block successfully received", Abstract).

Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method further comprising steps of: successfully obtaining delivery of another MMS message for the wireless telephone from the MMSC through the wireless network during the time period of waiting; and terminating the time period of waiting responsive to successfully obtaining the other message, so as to immediately implement the step of automatically initiating the second attempt to obtain delivery of the MMS message for the wireless telephone through the wireless network in order to improve the system efficiency.

Claim 32, 42 and 43 are rejected for the same reason as set forth in claim 31

**Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skog et al. (hereinafter Skog) (US 2006/0236187) in view of Cantwell et al. (hereinafter Cantwell)(US 6553237) and further in view of Crocker et al. (hereinafter Crocker) (US 2004/0198366).**

Regarding **claim 40**, the combination of Skog and Cantwell teaches all the particulars of the claim except the method, wherein the maximum number of attempts is set as a function of one or more operational characteristics of the wireless network. However, Crocker teaches in an analogous art a method wherein the maximum number of attempts is set as a function of one or more operational characteristics of the wireless network (Paragraph [0031]). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use a method wherein the maximum number of attempts is

set as a function of one or more operational characteristics of the wireless network in order provide a reliable communication.

Regarding **claim 41**, the combination of Skog and Cantwell teaches all the particulars of the claim except the method wherein the maximum number of attempts is set as a function of load on or capacity of the wireless network. However, Skog teaches in an analogous art wherein the maximum number of attempts is set as a function of load on or capacity of the wireless network (Paragraphs [0031,0032,0043]). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method wherein the maximum number of attempts is set as a function of load on or capacity of the wireless network in order to provide an efficient communication and is well known in the art as admitted by the applicant.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Muthuswamy G. Manoharan whose telephone number is 571-272-5515. The examiner can normally be reached on 7:00AM-2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eng George can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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